IN THE UTAH COURT OF APPEALS

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Jed Allred, Plaintiff and Appellee, v. Don Allred, Defendant and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20050234-CA F I L E D (August 4, 2005) 2005 UT App 338

Seventh District, Castle Dale Department, 030700036
The Honorable Bryce K. Bryner

Attorneys: J. Craig Smith and R. Christopher Preston, Salt Lake City, for Appellant
Richard M. Hymas, Salt Lake City, for Appellee

Before Judges Davis, Orme, and Thorne.

PER CURIAM:

Don Allred (Defendant) appeals (1) a judgment entered against him after he failed to appear at the scheduled trial and (2) the denial of his motion for a new trial and for relief from judgment under rules 59 and 60 of the Utah Rules of Civil Procedure. This case is before the court on Plaintiff Jed Allred's motion for summary disposition.

"We will generally reverse a trial court's denial of a rule 60(b) motion only where the court has exceeded its discretion." Fisher v. Bybee, 2004 UT 92,¶7, 104 P.3d 1198. "An appeal of a rule 60(b) order addresses only the propriety of the denial or grant of relief" and generally does not reach the merits of the underlying judgment. Id. Similarly, "both the granting of, and the refusing to grant, a new trial is a matter left to the discretion of the trial judge, and that decision will be reversed only if the judge has abused that discretion by acting unreasonably." Christenson v. Jewkes, 761 P.2d 1375, 1377 (Utah 1988).

The motion for new trial was made pursuant to rule 59(a)(1), alleging irregularity in the proceedings, and rule 59(a)(3), alleging "[a]ccident or surprise, which ordinary prudence could

not have guarded against." Utah R. Civ. P. 59(a). The motion for relief from judgment was brought pursuant to rule 60(b)(1), alleging mistake, inadvertence, surprise, or excusable neglect and rule 60(b)(6), alleging any other reason justifying relief. Defendant asserts that he did not understand that a trial had been scheduled at which he needed to defend against Plaintiff's claims. In sum, he claims that he intended to appear at trial to defend against Plaintiff's claims and had he known trial was scheduled for October 25, 2004, he would have attempted to appear.

On August 30, 2004, the court mailed Defendant a "Notice of Trial," which was signed by the district court judge and stated that "the trial in the above-entitled case will be held on October 25-26, 2004, beginning at 9:00 a.m. at the Emery County Courthouse in Castle Dale, Utah." The notice was timely and adequately described the nature of the proceedings against him. Accordingly, the notice did not reflect the deficiencies of the notice considered in Nelson v. Jacobsen, 669 P.2d 1207, 1212 (Utah 1983). Defendant admitted that he intentionally threw away or refused to accept notices sent to him by the court and opposing counsel, apparently including the Notice of Trial mailed to him by the district court. The district court's finding that Defendant did not act with ordinary prudence or as a result of mistake, inadvertence, surprise or excusable neglect is well supported. See Utah R. Civ. P. 59(a)(3) (allowing a new trial for accident or surprise that "ordinary prudence could not have guarded against"); Utah R. Civ. P. 60(b)(1) (allowing relief from judgment based upon mistake, inadvertence, surprise, or excusable neglect). In addition, claims regarding incorrect advice allegedly received from a deputy sheriff were refuted both by the affidavit of an Emery County Deputy Sheriff and by the notice of trial itself. The district court also did not err in concluding that it was not required to call a party who failed to appear for trial in this civil case where an adequate and timely notice of the trial was sent by the court. We conclude that the district court did not abuse its discretion in denying the motion for new trial or to set the judgment aside.

The district court was not obligated to schedule a pretrial conference to advise Defendant of his rights as a pro se litigant. See Utah R. Civ. P. 16(a) (stating that the court may schedule a pretrial conference "in its discretion or on motion of a party"). In Nelson, the supreme court concluded that, under "all the circumstances" of that case, it was "fundamentally unfair" to subject that defendant to trial. 669 P.2d at 1214. However, the court in Nelson did not hold that trial courts are required to give specific pretrial advice to all unrepresented civil litigants. Finally, the explanation for Defendant's failure to appear at trial was fully considered by the court in

its determination of the motion for a new trial or relief from judgment, and the court did not abuse its discretion in denying the motion. Accordingly, Defendant's claims that the opposing party or his counsel provided incomplete information to the court at the time of trial about the reasons for Defendant's absence, or failed to provide a timely witness and exhibit list, do not support a different result.

We affirm the judgment of the district court.

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James Z. Davis, Judge

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Gregory K. Orme, Judge

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William A. Thorne, Judge